

9.1	Definition and Purpose of Delinquency Adjudications.....	194
9.2	Advice of Right to Counsel and Waiver of Right to Counsel	196
9.3	Prosecuting Attorney Participation.....	197
9.4	Order of Proceedings.....	198
9.5	Jury Procedures	199
9.6	Jury Instructions	200
9.7	Motions for Directed Verdict in Jury Trials	202
9.8	Taking the Verdict in a Jury Trial	202
9.9	Sequestering Witnesses and Victims.....	203
9.10	Limitations on Testimony Identifying a Victim’s Address, Place of Employment, or Other Information.....	204
9.11	Rules of Evidence and Standard of Proof.....	205
9.12	The Court’s Right to Call Additional Witnesses or Order Production of Additional Evidence.....	206
9.13	Findings of Fact and Conclusions of Law by Judge or Referee.....	207
9.14	Record of Proceedings at Adjudicative Hearings.....	207
9.15	Motions for Rehearing or New Trial	207
	A. Standards for Granting Relief.....	208
	B. Procedural Requirements	209
	C. Remedies.....	209

In this chapter. . .

This chapter outlines the general procedural requirements for delinquency trials or “adjudicative hearings.” Section 9.1 distinguishes between delinquency adjudications and criminal convictions and contains a discussion of the common-law “infancy defense.” For discussion of demands for trial by jury or by judge, See Section 7.10.

Note on court rules. On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and “traditional waiver” proceedings, and to Subchapter 6.900, which govern “automatic waiver” proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998).

9.1 Definition and Purpose of Delinquency Adjudications

MCR 3.903(A)(26) defines a “trial” in delinquency proceedings as “the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court.” To find a juvenile within the jurisdiction of the court, the factfinder must find that the juvenile has violated a criminal law or committed a civil infraction or status offense. MCL 712A.2(a)(1)–(4). See also *In re Alton*, 203 Mich App 405, 407 (1994) (when a criminal offense is alleged as a basis for the court’s jurisdiction, the “critical issue” is whether the juvenile violated a substantive criminal law). The verdict in a delinquency proceeding must be guilty or not guilty of the offense charged or a lesser-included offense. MCR 3.942(D).

If a minor is found not to be within the court’s jurisdiction (i.e., “not guilty” of the alleged offense), the court must dismiss the petition. If a minor is found to be within the court’s jurisdiction, the court may enter orders of disposition “that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained.” MCL 712A.18(1). The rehabilitative purpose of proceedings under the Juvenile Code is set forth in MCL 712A.1(3), which states:

“This chapter shall be liberally construed so that each juvenile coming within the court’s jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile’s welfare and the best interest of the state. If the juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.”

The “infancy defense.” Before the advent of the juvenile court, the common law “infancy defense” was applied to minors charged with crimes. The “infancy defense” consists of three presumptions regarding minors’ capacity to form a criminal intent. If a minor is under seven years old, he or she is conclusively presumed incapable of forming a criminal intent and therefore cannot be *criminally* punished. If a minor is between the ages of seven and 14, a rebuttable presumption arises that the minor is incapable of forming a criminal intent. Minors over the age of 14 are conclusively presumed to have the capacity to form a criminal intent. In *Allen v United States*, 150 US 551, 558 (1893), the United States Supreme Court described the common law “infancy defense”:

“The rule of the common law was that one under the age of 7 years could not be guilty of felony, or punished for any capital offense, for within that age the infant was conclusively presumed to be incapable of committing the crime; and that, while between the ages of 7 and 14 the same presumption obtained, it was only *prima facie*, and

rebuttable. The maxim, ‘malice supplies the want of maturity of years,’ was then applied, and upon satisfactory evidence of capacity the child within these ages might be punished; but no presumption existed in favor of the accused when above 14.”

For children between the ages of seven and 14, the prosecuting attorney has the burden of producing evidence and proving that the child had the requisite capacity. The quantum of proof needed to rebut the presumption of incapacity may decline the greater the child’s age. See *Adams v State*, 262 A2d 69, 72 (1970). “The relevant inquiry is whether the child appreciated the quality of his or her acts at the time the act was committed.” *State v TEH*, 960 P2d 441, 444 (Wash App, 1998). The prosecutor may meet this burden by exploring the child’s age, experience, knowledge, and conduct. *In re Gladys R*, 464 P2d 127, 136 (Cal, 1970).

Capacity to form criminal intent should be distinguished from the “*mens rea*” or “state of mind” requirement for a given criminal offense. Capacity to form a criminal intent (i.e., to be legally responsible for an act that is criminal) is a necessary prerequisite to possessing the requisite state of mind to commit a specific criminal offense. However, at least one court has held that requiring the “state of mind” element for the charged offense to be proved beyond a reasonable doubt protects against punishing those unable to form any criminal intent, and that allowing juveniles between the ages of seven and 14 to show that they did not have the requisite state of mind to commit the charged offense satisfies the policy considerations underlying the “infancy defense.” *In re Robert M*, 441 NYS 2d 860 (1981).

The Michigan Supreme Court has held that a child under 7 years of age is incapable of committing a negligent act, an intentional tort, or a crime. *Burhans v Witbeck*, 375 Mich 253, 254–55 (1965), and *Queen Ins Co v Hammond*, 374 Mich 655, 657–58 (1965). However, Michigan appellate courts have not addressed the applicability of the “infancy defense” to criminal or delinquency proceedings. MCL 712A.1(2) states that “[e]xcept as otherwise provided, proceedings under this chapter are not criminal proceedings.” The exception is designated case proceedings, which are discussed in Chapters 17–19 and 23. Because designated case proceedings are criminal and may involve children under age 14, the “infancy defense” applies to those proceedings.

*In addition, a juvenile's age and mental maturity are often taken into account when deciding whether to treat a case formally or informally. See Sections 4.4 (diversion) and 4.5 (consent calendar).

The applicability of the “infancy defense” to delinquency adjudications. Since the advent of the juvenile court, several courts have concluded that the “infancy defense” does not apply to delinquency proceedings. See *Ex rel Humphrey*, 201 SW 771 (Tenn, 1918) (the state’s “Juvenile Court Act” implicitly abolished the “infancy defense”) and *In the Interest of MCH*, 637 NW 2d 678, 679–80 (ND, 2001). This is in part due to distinctions between a “juvenile adjudication” and a criminal conviction. The purpose of a delinquency trial is to determine if a juvenile committed an act *that would be a criminal offense if committed by an adult*. The juvenile is not convicted of the offense itself. *State v DH*, 340 S2d 1163 (Fla, 1976) (distinguishing between a finding of delinquency based on an act that would be criminal if committed by an adult and a criminal conviction). More importantly, the purpose of the “infancy defense” is to avoid punishing persons who cannot appreciate the wrongfulness of their conduct. Criminal punishment is deemed ineffectual if the person punished does not understand that he or she committed a wrongful act in the first place. Because juveniles adjudicated delinquent are not punished in the same way that persons convicted of a criminal offense are punished, the rationale for the “infancy defense” may not apply in the delinquency context.* However, one may argue that delinquency proceedings have become similar to criminal proceedings and more punitive; therefore, the “infancy defense” may be properly applied in delinquency proceedings. See *In re Andrew M*, 398 NYS 2d 824 (1977) (because the *Gault* and *Winship* cases imposed criminal procedures upon delinquency proceedings, the “infancy defense” should apply), *State v JPS*, 954 P2d 984 (Wash, 1998) (describing application of a statutory presumption of incapacity of children between eight and 12 years of age), and Walkover, *The infancy defense in the new juvenile court*, 31 UCLA L Rev 503 (1984) (discussing how the “infancy defense” was negated by the juvenile court’s emphasis on treatment of the offender rather than punishment, but arguing that the defense should apply because delinquency proceedings have become more like criminal proceedings).

9.2 Advice of Right to Counsel and Waiver of Right to Counsel

If a juvenile charged with an offense that would be a criminal offense if committed by an adult or a status offense is not represented by an attorney, the court must advise the juvenile of the right to the assistance of counsel at each stage of the proceedings. MCL 712A.17c(1). MCR 3.915(A)(1) states that this advice is required “at each stage of the proceedings on the formal calendar, including trial. . . .”

MCL 712A.17c(3) and MCR 3.915(A)(3) set forth the required procedures for a juvenile to waive his or her right to counsel. MCL 712A.17c(3) states as follows:

“Except as otherwise provided in this subsection, in a proceeding under [MCL 712A.2(a) or (d) (criminal violations, status offenses, and violation of the “wayward minor” provisions)] the child may waive his or her right to an attorney. The waiver by a child shall be made in open court, on the record, and shall not be made unless the court finds on the record that the waiver was voluntarily and understandingly made. The child may not waive his or her right to an attorney if the child’s parent or guardian ad litem objects or if the appointment is made under [MCL 712A.17c(2)(e)*].”

*This statutory section requires appointment of counsel if “[t]he court determines that the best interests of the child or the public require appointment.” See Section 5.7(B).

MCR 3.915(A)(3) states:

“Waiver of Attorney. The juvenile may waive the right to the assistance of an attorney except where a parent, guardian, legal custodian, or guardian ad litem objects or when the appointment is based on [MCR 3.915(A)(2)(e)]. The waiver by a juvenile must be made in open court to the judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made.”

See also *In re Bennett*, 135 Mich App 559, 565 (1984) (as a best practice, the court should require the juvenile and parent, guardian, or custodian to sign a waiver of counsel form).*

*See SCAO Form JC 06.

MCR 3.942(B)(3) imposes additional requirements for a waiver of counsel at trial. That rule states:

“The court shall inform the juvenile of the right to the assistance of an attorney pursuant to MCR 3.915 unless an attorney appears representing the juvenile. If the juvenile requests to proceed without the assistance of an attorney, the court must advise the juvenile of the dangers and disadvantages of self-representation and make sure the juvenile is literate and competent to conduct the defense.”

9.3 Prosecuting Attorney Participation

If the court requests, the prosecuting attorney must review the petition for legal sufficiency and appear at any delinquency proceeding. MCR 3.914(A) and MCL 712A.17(4). If an offense that would be a criminal offense if committed by an adult is alleged, the prosecuting attorney must participate in every delinquency proceeding “that requires a hearing and the taking of testimony.” MCR 3.914(B)(2). MCL 712A.17(4) only requires the prosecuting attorney to *appear* if a criminal offense is alleged and the proceeding requires a

hearing and the taking of testimony. Thus, if a status offense is alleged, the prosecuting attorney must appear at trial if the court requests; if a criminal offense is alleged, the prosecuting attorney must appear and participate in a trial.

The prosecuting attorney may be a county prosecuting attorney, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or, if an ordinance violation is alleged, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based. MCR 3.903(B)(4).

9.4 Order of Proceedings

MCR 3.942(B) contains rules governing preliminary matters at trials. This rule states:

“(1) The court shall determine whether all parties are present.

(a) The juvenile has the right to be present at the trial with an attorney, parent, guardian, legal custodian, or guardian ad litem if any.

(b) The court may proceed in the absence of a parent, guardian, or legal custodian who was properly notified to appear.

(c) The victim has the right to be present at trial as provided by MCL 780.789.*

“(2) The court shall read the allegations contained in the petition, unless waived.”

The 1988 Staff Comment to MCR 3.942 (Trials) discusses in general terms the procedures to be followed at trial.

“The order of proceedings, although not spelled out, is intended to be similar to that in criminal proceedings. The court would allow the parties to deliver an opening statement. The petitioner would make his or her opening statement first. The petitioner would offer evidence in support of the petition and then the juvenile would be allowed to offer evidence in defense. The petitioner may offer evidence in rebuttal of the juvenile’s evidence, and the juvenile may then offer evidence in rebuttal of the petitioner’s evidence. In the interest of justice, the court may allow the parties to offer further rebuttal or surrebuttal evidence. At the conclusion of the evidence,

*See Section 9.9, below.

the petitioner, followed by the juvenile, has the right to deliver a closing argument. The petitioner would then have the right to deliver a rebuttal closing argument.”

See Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), p 810.

Required procedures for the factfinding hearing on an alleged violation of the Michigan Vehicle Code. MCL 712A.2b states:

“When a juvenile is accused of an act that constitutes a violation of the Michigan vehicle code, . . . or a provision of an ordinance substantially corresponding to any provision of [the Michigan Vehicle Code], the following procedure applies, *any other provision of this chapter notwithstanding*. . . .” (Emphasis added.)

The last phrase of this provision excludes application of other provisions of the Juvenile Code to cases involving alleged violations of the Michigan Vehicle Code. The subsection of §2b that pertains to the factfinding hearing on such a violation, MCL 712A.2b(c), states:

“If after hearing the case the court finds the accusation to be true, the court may dispose of the case under section 18 of this chapter.”

Section 2b(c) suggests that a “bench trial” will occur if the juvenile contests the charges, rather than a jury trial. Under MCL 712A.17(2), any “interested person” may demand a jury trial.*

*See Section 7.10 for further discussion of the right to jury trial.

9.5 Jury Procedures

In delinquency proceedings, prospective jurors must be summoned and impaneled in accordance with MCL 600.1376 et seq. Juries in delinquency cases consist of six individuals. MCL 712A.17(2). Alternate jurors may be impaneled and may deliberate pursuant to MCR 2.511(B) and 2.512(A)(3).

Jury procedures in delinquency cases are governed by MCR 2.508–2.516 (civil cases), except that each party is entitled to 5 peremptory challenges and the verdict must be unanimous. MCR 3.911(C)(1)(a) and (b). The applicable jury procedure rules are as follows:

- MCR 2.508 Jury Trial of Right
- MCR 2.509 Trial by Jury or Trial by Court
- MCR 2.510 Juror Personal History Questionnaire
- MCR 2.511 Impaneling the Jury

Section 9.6

*See Section 9.8, below.

*See Section 9.7, below.

*See Section 9.6, below.

- MCR 2.512 Rendering Verdict*
- MCR 2.513 View
- MCR 2.514 Special Verdicts
- MCR 2.515 Motion for Directed Verdict*
- MCR 2.516 Instructions to Jury*

Peremptory challenges. MCR 3.911(C)(1)(a) provides that each party is entitled to five peremptory challenges. However, MCR 3.911(C)(3) qualifies this as follows:

“(3) Two or more parties on the same side, other than a child in a child protective proceeding, are considered a single party for the purpose of peremptory challenges.

(a) When two or more parties are aligned on the same side and have adverse interests, the court shall allow each such party represented by a different attorney 3 peremptory challenges.

(b) When multiple parties are allowed more than 5 peremptory challenges under this subrule, the court may allow the opposite side a total number of peremptory challenges not to exceed the number allowed to the multiple parties.”

9.6 Jury Instructions

MCR 2.516(D) governs the creation, modification, and use of Model Civil Jury Instructions. Because there are no Model Civil Jury Instructions for use in delinquency proceedings, an alternative must be used. MCR 2.516(D)(4) states:

“This subrule does not limit the power of the court to give additional instructions on applicable law not covered by the model instructions. Additional instructions when given must be patterned as nearly as practicable after the style of the model instructions, and must be concise, understandable, conversational, unslanted, and nonargumentative.”

The Michigan Probate Judges Association has approved using the Standard Criminal Jury Instructions, with appropriate modifications.

“In cases of juvenile delinquency, the Standard Criminal Jury Instructions, Second Edition, should be used, with

appropriate modifications. Whether modifications are either desirable or necessary depends in part on the allegations in the petition. If the juvenile is charged with an offense which would be a crime if committed by an adult, the terms ‘defendant’ and ‘crime’ in the Standard Criminal Jury Instructions may be used to avoid confusion and slips of the tongue by attorneys or the words ‘respondent’ and ‘offense’ may be substituted. However, where a juvenile is charged with an offense which would not be a crime if committed by an adult, such substitutions are mandatory. In addition, the form of verdict is optional with the court. The jury should either be instructed that if they find the juvenile guilty (or not guilty) of the offense as charged, they must find that the juvenile comes (or does not come) within the jurisdiction of the court, or the jury may be instructed that they are to find the juvenile guilty or not guilty, with the judge ruling that, as a matter of law, the jury having found the juvenile guilty (or not guilty), the juvenile comes (or does not come) within the jurisdiction of the court.” Hon. Donald S. Owens, *Juvenile Jury Instructions*, “*Delinquency Jury Instructions*,” January 1995.

See also *In re Robinson*, 180 Mich App 454, 462 (1989) (use of a common-law felony murder instruction in a delinquency case).

Instructing the jury on the nature of the proceedings. MCR 2.516(B)(1) requires the court to give the jury preliminary instructions on the nature of the proceedings and the applicable law. That rule states in part:

“After the jury is sworn and before evidence is taken, the court shall give such preliminary instructions regarding the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence.”

It violates the court’s duty under MCR 2.516(B)(1) to inform a jury that it should not be concerned with whether it is hearing a juvenile delinquency or criminal matter. *In re Azizuddin Mujtabaa-el*, unpublished opinion per curiam of the Court of Appeals, March 8, 2002 (Docket No. 234828).

In *In re Spears*, 250 Mich App 349, 350–51 (2002), the prosecuting attorney requested that the trial court bar the juvenile’s attorney from questioning prospective jurors during voir dire about the Sex Offenders Registration Act (SORA). After the trial court denied the prosecutor’s motion, the prosecutor took an interlocutory appeal. The Court of Appeals reversed and remanded the case, finding that discussion in the jury’s presence of the consequences of a conviction or adjudication, including disposition of the accused after a

verdict, is not permitted at any point in the proceedings. *Id.* at 352–53, citing *People v Bailey*, 169 Mich App 492, 500–01 (1988), and *People v Goad*, 421 Mich 20, 25–26 (1984). The Court also held that although registration is not a penalty or punishment, it is a consequence of a conviction or adjudication, and informing a jury of the requirements under SORA may distract jurors from deducing the truth from the evidence presented at trial. *Id.* at 354–55.

9.7 Motions for Directed Verdict in Jury Trials

MCR 2.515 allows for a motion for directed verdict to be made at the close of the evidence offered by the opponent. Because the petitioner must show beyond a reasonable doubt that the juvenile comes within the jurisdiction of the court, the juvenile may move for a directed verdict at the close of the prosecuting attorney’s or petitioner’s proofs. The motion must be supported by specific grounds. If the motion is denied, the moving party may offer evidence without having reserved the right to do so. Denial of a motion for directed verdict does not constitute waiver of trial by jury.

In deciding on the motion, the court must examine, in a light most favorable to the petitioner, all evidence presented up to the time of the motion and all legitimate inferences that may be drawn from it. The petitioner must have introduced sufficient evidence of each element of the offense to justify a rational trier of fact in finding the juvenile “guilty” beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368 (1979), and *In re Winship*, 397 US 358, 364 (1970).

9.8 Taking the Verdict in a Jury Trial

The verdict in a delinquency proceeding must be guilty or not guilty of the offense charged or a lesser-included offense. MCR 3.942(D). MCR 3.911(C)(1)(b) requires the verdict to be unanimous. A party may require the jury to be polled. If the number of jurors agreeing is less than required, the jury must be sent out for further deliberation. MCR 2.512(B)(2)–(3) and *People v Bufkin*, 168 Mich App 615, 617 (1988). The court may discharge a jury:

“(1) because of an accident or calamity requiring it;

“(2) by consent of all the parties;

“(3) whenever an adjournment or mistrial is declared;

“(4) whenever the jurors have deliberated until it appears that they cannot agree.

“The court may order another jury to be drawn, and the same proceedings may be had before the new jury as might have been had before the jury discharged.” MCR 2.512(C)(1)–(4).

9.9 Sequestering Witnesses and Victims

Witnesses other than victims. Under the Revised Judicature Act, pursuant to MCL 600.1420, a court, for good cause shown, has the authority to sequester witnesses from the courtroom to discourage collusion. Additionally, under MRE 615, a court may exclude nonparty witnesses from the courtroom at the request of a party or on its own motion. Sequestration requests are within the trial court’s discretion and are ordinarily granted. *People v Cutler*, 73 Mich App 313, 315 (1977), and *People v Hill*, 88 Mich App 50, 65 (1979). The purpose of sequestering a witness is to prevent the witness from “coloring” his or her testimony to conform with the testimony of other witnesses. *People v Stanley*, 71 Mich App 56, 61 (1976). Thus, a trial court presumably has discretion to sequester witnesses from all stages of the proceeding, including jury selection, opening statements, presentation of the case-in-chief, presentation of the defense case, presentation of rebuttal evidence, and closing arguments.

The foregoing authority to sequester witnesses or other persons is not unlimited. Under MRE 615, a trial court must not exclude “a person whose presence is shown by a party to be essential to the presentation of the party’s cause.” This exception ordinarily applies in criminal cases where law enforcement personnel assist the prosecutor with the presentation of evidence, or where victim “support persons” are used. See *People v Jehnsen*, 183 Mich App 305, 308 (1990).*

*See Section 7.13(B) for more on the *Jehnsen* case.

A trial court may sequester a rebuttal witness before or after he or she testifies in rebuttal. Neither MCL 600.1420 nor MRE 615 limit a court’s authority in such circumstances.

Victims. In Michigan, a crime victim has a constitutional right to attend a criminal trial, juvenile adjudication, and other court proceedings. Const 1963, art 1 § 24 provides in pertinent part:

“(1) Crime victims, as defined by law,* shall have the following rights, as provided by law:

* * *

“The right to attend trial and all other court proceedings the accused has the right to attend.”

*For the definition of “victim,” see Section 4.3(A).

A crime victim may attend every court proceeding that an accused person has a right to attend. Note that an accused person does not have a right to attend *all* court proceedings. An accused person has a right to attend

proceedings involving voir dire, selection of and subsequent challenges to the jury, presentation of evidence, summation of counsel, instructions to the jury, rendition of the verdict, imposition of sentence, and any other stage of trial where a defendant's "substantial rights" might be adversely affected. *People v Mallory*, 421 Mich 229, 247 (1984). See also *People v Thomas*, 46 Mich App 312, 320 (1973) (the accused is entitled to be present at pretrial evidentiary hearings on admissibility of evidence), and MCL 768.3 (a person accused of a felony must be present during trial, but a person accused of a misdemeanor may request leave of court to appear through an attorney). However, the accused does not have the right to attend motions, conferences, and discussions of law, even during trial, if they do not involve "substantial rights" vital to the defendant's participation in his or her own defense. *Thomas, supra* at 320.

A victim's constitutional right to attend *trial* is circumscribed by one significant limitation: upon good cause shown, the victim may be sequestered as a witness until he or she *first* testifies. MCL 780.789 states:

"The victim has the right to be present throughout the entire contested adjudicative hearing or waiver hearing of the juvenile, unless the victim is going to be called as a witness. If the victim is going to be called as a witness, the court, for good cause shown, may order the victim to be sequestered until the victim first testifies. The victim shall not be sequestered after he or she first testifies."

If the defense also identifies the victim as a witness for trial, i.e., places the victim's name on the defense witness list, a court may, under the foregoing statutory provisions, and upon good cause shown, only sequester the victim until he or she first testifies, which would presumably have occurred in the prosecution's case-in-chief.

9.10 Limitations on Testimony Identifying a Victim's Address, Place of Employment, or Other Information

In juvenile delinquency cases, MCR 3.922(A)(1)(c) allows discovery of the names of prospective witnesses, but not their addresses. Compare MCR 6.201(A)(1). In addition, the prosecuting attorney or victim may request that a victim's identifying information be protected from disclosure at trial. MCL 780.788 states:

"Based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the juvenile or at the juvenile's direction against the victim or the victim's immediate family, the prosecuting attorney may move or, in the absence of a prosecuting attorney, the victim may request that the victim or any other witness not be compelled to testify at any court

hearing for purposes of identifying the victim as to the victim's address, place of employment, or other personal identification without the victim's consent. A hearing on the motion shall be in camera."

In *Alford v United States*, 282 US 687, 692–94 (1931), the United States Supreme Court held that it was error for the trial court to prohibit cross-examination of a prosecution witness regarding the witness' place of residence. In *Smith v Illinois*, 390 US 129, 133 (1968), the Supreme Court held that the trial court's refusal to allow the defendant to cross-examine a witness concerning his real name and address denied defendant his federal constitutional right to confront the witnesses against him. See also *People v Paduchoski*, 50 Mich App 434, 438 (1973) (the trial court denied defendant his federal constitutional right of confrontation by refusing to allow cross-examination regarding a witness' place of employment).

However, there are two exceptions to the rules stated in *Alford* and *Smith*. The trial court may limit cross-examination regarding a witness' address if the questions tend merely to harass, annoy, or humiliate the witness, or if the questions would tend to endanger the personal safety of the witness. *Alford*, *supra*, at 694, and *Smith*, *supra*, at 134–35 (White, J, concurring).

In *People v McIntosh*, 400 Mich 1, 8 (1977), the Michigan Supreme Court held that the trial court did not err in refusing to allow defense counsel to ask a key prosecution witness where she lived. The witness' address was available in police reports and the prosecutor's case file, and the witness had been threatened by several spectators in the courtroom.

9.11 Rules of Evidence and Standard of Proof

MCR 3.942(C) states that "[t]he Michigan Rules of Evidence and the standard of proof beyond a reasonable doubt apply at trial." Application of the "beyond a reasonable doubt" standard of proof is a constitutional requirement. *In re Winship*, 397 US 358, 366–68 (1970). The "beyond a reasonable doubt" standard of proof applies at trial when a status offense is alleged. *In re Weiss*, 224 Mich App 37, 42 (1997).

Admissibility of evidence under the "teacher-student privilege." MCL 600.2165 prohibits public school employees from disclosing records or confidences without the consent of a parent or legal guardian if the child is under 18 years of age. That statute states:

"No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker or such schools and institutions, who maintains records of students' behavior or who has records in his custody, or who receives in

confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose information obtained by him from the records or such communications; nor to produce records or transcript thereof, except that testimony may be given, with the consent of the person so confiding or to whom the records relate, if the person is 18 years of age or over, or, if the person is a minor, with the consent of his or her parent or legal guardian.”

To show that a juvenile comes within the court’s jurisdiction under MCL 712A.2(a)(4) (truancy), the petitioner must show that “[t]he juvenile wilfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile’s educational needs, or repeatedly violates rules and regulations of the school or other learning program, and the court finds on the record that the juvenile, the juvenile’s parent, guardian, or custodian, and school officials or learning program personnel have met on the juvenile’s educational problems and educational counseling and alternative agency help have been sought.” In *Weiss, supra* at 41, the Court of Appeals found that incorrigibility under MCL 712A.2(a)(3) “encompasses getting suspended from school or performing illegal acts.” If a petitioner seeks to admit school records or statements by a juvenile to school personnel to prove truancy or incorrigibility, the petitioner must obtain the consent of a parent or guardian if the juvenile is under 18 years old. However, it appears that MCL 600.2165 does not prevent a petitioner from calling school personnel to testify regarding their personal observations of a student’s attendance or behavior.

Where no teacher or administrator is called to testify, MCL 600.2165 is inapplicable. *People v Pitts*, 216 Mich App 229, 235 (1996). “Moreover, where there is no indication that the communication was confidential, the student-teacher privilege is neither at issue nor violated.” *Id.* (privilege did not apply where the defendant made an incriminating statement in the presence of an assistant principal, a teacher, the complainant, and another person).

9.12 The Court’s Authority to Call Additional Witnesses or Order Production of Additional Evidence

The court has authority to call or examine witnesses and to order production of additional evidence or witnesses. MCR 3.923(A)(1) states:

“(A) **Additional Evidence.** If at any time the court believes that the evidence has not been fully developed, it may:

- (1) examine a witness,

- (2) call a witness, or
- (3) adjourn the matter before the court, and
 - (a) cause service of process on additional witnesses, or
 - (b) order production of other evidence.”

See *In re Alton*, 203 Mich App 405, 407–08 (1994) (court properly allowed additional testimony that directly addressed key conflicts between the testimony of the complainant and juvenile).

9.13 Findings of Fact and Conclusions of Law by Judge or Referee

Subchapter 3.900 of the Michigan Court Rules does not have a specific court rule dealing with findings of fact and conclusions of law by a judge or referee in a nonjury trial.

MCL 712A.10(1)(c) states that a referee must “make a written signed report to the judge . . . containing a summary of the testimony taken and a recommendation for the court’s findings”

9.14 Record of Proceedings at Adjudicative Hearings

MCR 3.925(B) states that “[a] record of all hearings must be made. All proceedings on the formal calendar must be recorded by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108.”

9.15 Motions for Rehearing or New Trial

In a delinquency proceeding, a party may seek a rehearing or new trial by filing a written motion* stating the basis for the relief sought. MCR 3.992(A). MCL 712A.21 allows a petition for rehearing to be filed by “an interested person,” which includes a member of a local foster care review board. MCL 712A.21(3). “A motion will not be considered unless it presents a matter not previously presented to the court, or presented but not previously considered by the court, which, if true, would cause the court to reconsider the case.” MCR 3.992(A).

*See SCAO
Form JC 15.

A. Standards for Granting Relief

MCR 3.992(A) does not state the standard for granting relief following a court's consideration of a party's motion for rehearing. *In re Alton*, 203 Mich App 405, 409 (1994). However, MCR 2.613(A), the "harmless error rule" for civil proceedings, applies to juvenile delinquency proceedings. MCR 3.902(A). The "harmless error rule" states that "[a]n error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice."

In *In re Alton*, *supra*, at 409–10, the Court of Appeals remanded the case to the juvenile court for a rehearing on the juvenile's motion for a new trial. In doing so, the Court adopted the following guidelines for ruling on such motions:

"In ruling on the motion, the parties and the trial court applied the rules for granting a new trial embodied in MCR 2.611(A)(1). That court rule is not applicable in juvenile delinquency proceedings. See MCR 3.901(B). Therefore, we remand this case for the trial court to reconsider the juvenile's motion under the proper standard of review: whether, in light of the new evidence presented, it appears to the trial court that a failure to grant the juvenile a new trial would be inconsistent with substantial justice. MCR 2.613(A). In this case, that means the trial court must decide whether it appears that if the court refuses to grant the motion, it will be exercising jurisdiction over a juvenile who is not properly within its jurisdiction. The trial court must state the reasons for its decision on the record or in writing. MCR 3.992(E)." (Footnote omitted.)

In *In re Ayres*, 239 Mich App 8, 23–24 (1999), the Court of Appeals applied the standard applied in criminal cases when deciding whether to grant a new trial on the ground that the verdict was against the great weight of the evidence. A court may grant such a motion "only if the evidence preponderates heavily against the verdict so that a miscarriage of justice would result from allowing the verdict to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW 2d 129 (1998). The trial judge is not allowed to sit as the 'thirteenth' juror and grant a new trial on the basis of a disagreement with the jurors assessment of credibility. *Id.* at 647." *Ayres*, *supra*. In *Ayres*, the Court of Appeals held that inconsistencies in the witnesses' testimony did not require reversal of the jury's verdict, where the inconsistencies resulted from the witnesses' age (from four to six years), and the charged offenses occurred about six months before trial. *Id.* at 24–25.

B. Procedural Requirements

Time requirements for filing motions and responses. The written motion stating the basis for the relief sought must be filed “within 21 days after the date of the order resulting from the hearing or trial. The court may entertain an untimely motion for good cause shown.” MCR 3.992(A).

Any response by parties to a motion for rehearing or new trial must be in writing and filed with the court and served on opposing parties within seven days after notice of the motion. MCR 3.992(C).

Notice requirements. MCR 3.992(B) states that all parties must be given notice of the motion in accordance with MCR 3.920.*

*See Section 6.7.

No hearing required. MCR 3.992(E) provides that the court need not hold a hearing for a ruling on a motion for rehearing or new trial. “Any hearing conducted shall be in accordance with the rules for dispositional hearings and, at the discretion of the court, may be assigned to the person who conducted the hearing.”*

*See Section 10.6 for a discussion of the applicable evidentiary rules.

Stay of proceedings and grant of bail. MCR 3.992(F) provides that the court may stay any order or grant bail to a detained juvenile pending a ruling on a motion for rehearing or new trial.

Findings by court. The court shall state the reasons for its decision on the record or in writing. MCR 3.992(E).

C. Remedies

MCR 3.992(D) states that “[t]he judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case.” The court may enter an order for supplemental disposition while the juvenile remains under the court’s jurisdiction. MCL 712A.21(1).